

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JIM BROOKS

APPELLANT,

**v.
CITY OF SUGAR CREEK, ET AL.**

RESPONDENT.

DOCKET NUMBER WD71855
DATE: March 22, 2011

Appeal From:

Jackson County Circuit Court
The Honorable Marco A. Roldan, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Rodney A. Ames, Liberty, MO, for appellant.

Robert O. Jester and Matthew J. Gist, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Three: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

On December 22, 2008, Brooks filed his wrongful discharge and wrongful termination petition in the Circuit Court of Jackson County. As amended, Brooks's Petition alleged that on March 25, 2008, he had been employed as a police officer with the City. On that evening, Brooks stopped a vehicle for running a red light. Brooks determined that the operator of the vehicle had been drinking alcohol and failed the field sobriety tests. Brooks arrested the driver, and then transported her to the City's police headquarters. The driver subsequently refused a breathalyzer test, and then made threats to Brooks that she had a "close relationship with the Police Department of the City of Sugar Creek" and that "she could arrange to have the Plaintiff terminated by the Police Department."

Sergeant Jonathan Fields, who was Brooks's superior in the Police Department, was informed by Brooks that he had arrested this specific suspect. Fields informed Brooks that the suspect was the owner of a well known business and was then instructed by his superior to "Make it go away!" The next day, Brooks was summoned to Police Headquarters by the Police Chief. Brooks was informed that he was terminated effective immediately.

The City filed its Motion for Summary Judgment on the basis that Brooks's wrongful discharge and wrongful termination claims were barred, as a matter of law, by the doctrine of sovereign immunity. The circuit court issued its Judgment granting Defendant City of Sugar Creek's Motion for Summary Judgment. Soule and Fields also filed a motion to dismiss Brooks's Petition on the basis that, as a matter of law, Brooks could not bring his wrongful discharge and wrongful termination claims against them because they are individuals and not his employer. The trial court entered its Judgment granting Soule and Fields's Motion to Dismiss. Brooks appeals.

AFFIRMED.

Brooks alleges that the trial court erred in granting summary judgment over his claims, as it pertained to the City, "because the actions of the City through its agents are not protected acts under sovereign immunity in that sovereign immunity is only intended to protect actions that benefit the general public so as to be deemed a governmental function." Here, the trial court

granted the City's motion for summary judgment, as it pertained to the City, based on its conclusion that "the doctrine of sovereign immunity bars common law claims for wrongful termination and/or wrongful discharge."

A municipality has sovereign immunity from actions at common law tort for those actions they undertake as a part of the municipality's governmental functions-actions benefiting the general public. The Missouri Supreme Court has repeatedly held that termination of a city employee is a governmental function and that, therefore, the city is protected by governmental immunity unless some exception applies. Here, Brooks argues that public policy prevents the City from enjoying sovereign immunity from his wrongful termination lawsuit in that "logic cannot support a doctrine that terminating a police officer for arresting a drunk driver because that drunken driver is [a] personal friend of the police supervisors or chief of police is in anyway a benefit to the general public." This Court recently addressed, and ultimately rejected, an almost identical issue in *Bennartz v. City of Columbia*.

Accordingly, since the General Assembly has not taken our kind invitation in *Bennartz* to review this area of the law, (maybe the outrageous facts of this case where a policeman was allegedly fired for arresting the friend of his supervisor for driving while intoxicated will get the General Assembly's attention) we cannot conclude that the trial court erred in granting the City's summary judgment motion based on the doctrine of sovereign immunity. In the case at bar, if Brooks is able to prove his allegation at trial that he did his job by arresting an intoxicated driver, but was terminated from his employment solely because the intoxicated driver was a friend of the Police Chief, it becomes very difficult to argue that the public benefited in any way from his termination. Point One is denied.

In Point Two, Brooks argues in the alternative that the trial court erred in granting summary judgment over his claims as it pertained to the City "because Defendant did not establish its right to sovereign immunity in this case in that there remain significant factual issues to be determined regarding the existence and extent of defendant's insurance coverage." We disagree. When a public entity purchases liability insurance for tort claims, sovereign immunity is waived to the extent of and for the specific purposes of the insurance purchased. In granting the City's motion for summary judgment, the trial court found that the language contained in the City's policy does not waive Sugar Creek's sovereign immunity. Brooks has failed to demonstrate that the trial court's findings and conclusions in this regard were in error. Point Two is denied.

Finally, in Point Three Brooks argues that the "trial court erred in granting defendants Herbert Soule and Jonathan Fields's preliminary motions to dismiss because plaintiff alleged submissible claims against Defendants Soule and Fields in that those defendants may be held liable for their own wrongful conduct undertaken in conjunction with the tort of wrongful termination in violation of public policy."

Here, Brooks made no allegation in his First Amended Petition that either Soule or Fields employed Brooks, and thus the question becomes whether Brooks may maintain a wrongful termination/discharge claim against either individual defendant. In granting the motion to dismiss, the trial court found "that there is no case law in the State of Missouri indicating that

public employees and/or officials are ‘employers’ for purposes of a common law wrongful termination/discharge claim,” and that “[o]ther jurisdictions have held that there is no individual liability in a common law wrongful termination claim.” Today, we need not definitively resolve the legal issue of whether a plaintiff may bring a wrongful discharge claim against individual defendants other than the company or agency that employs the plaintiff. This is because Brooks has never asserted in this litigation that an employee-employer relationship existed between himself and the individual defendants he wished to sue for wrongful termination. Rather, Brooks only alleged that he “was an at will employee of Defendant City of Sugar Creek.” Missouri case law holds that to be liable in an action for wrongful discharge, an employee-employer relationship must exist between plaintiff and each named defendant, unless there is statutory authority establishing individual liability. Point Three is denied.

The judgment of the circuit court is hereby affirmed.

Opinion by Gary D. Witt, Judge

March 22, 2011

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